

APPEAL NO. 030546
FILED APRIL 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2003. The hearing officer resolved the disputed issue by determining that the claimant is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals this decision, as well as the findings of fact upon which it is based. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(e)), provides that "an injured employee who . . . is able to return to work in any capacity shall look for employment . . . every week of the qualifying period and document his or her job search efforts." The hearing officer determined that the claimant did not satisfy the requirements of Rule 130.102(e), because he did not document a job search effort each week of the qualifying period. The claimant argues that based on the inaccurate information he was initially given, that being that the qualifying period began on July 3 and ended on October 2, 2002, the claimant indeed documented a job search effort each week of the qualifying period. We agree that the claimant was entitled to rely on the dates listed on the Application for [SIBs] (TWCC-52) regardless of whether the inaccurate dates were supplied by the carrier or the Texas Workers' Compensation Commission (Texas Workers' Compensation Commission Appeal No. 010617-s,

decided May 15, 2001, Texas Workers' Compensation Commission Appeal No. 010815-s, decided June 6). However, the evidence reflects that the claimant did not document a job search for the week of July 31 through August 6, 2002, which was the fifth week of the quarter as miscalculated on the initial TWCC-52. Additionally, the evidence reflects that the claimant did not document a job search during each week of the corrected qualifying period, which was stipulated as being from June 7 through September 5, 2002. Accordingly, we cannot agree that the hearing officer erred in determining that the claimant did not satisfy the requirement of Rule 130.102(e) for SIBs entitlement.

Rule 130.102(d)(4) states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Whether the claimant established that he had no ability to work during the qualifying period in question was a factual determination for the hearing officer. The hearing officer found that the claimant had some ability to work during the qualifying period as evidenced by the surveillance report and the claimant's participation in his educational pursuit. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Because we affirm the hearing officer's determination that the claimant did not satisfy the good faith criterion for SIBs entitlement, we need not address the issue relating to direct result.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **AIU INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge